OFFICER HOLDING OVER AFTER EXPIRATION OF TERM.

The Constitution of Virginia provides that "all officers, elected or appointed, shall continue to discharge the duties of their office after their terms of service have expired until their successors have qualified." Const. Va., art. 2, § 33.

In order to discharge the duties of his office, an officer holding over has the indisputable title to the office against all the world except his successor, and as to his successor he has the right to the office until the latter shall have, in all respects, complied with every prerequisite before entering on the duties of the office, and in addition to being elected he shall have qualified. All offices to which the above constitutional provision applies are held by the same title, or by as high and lawful tenure, after the prescribed term, until the title of a duly elected and qualified successor attaches, as before and during such term.

The Supreme Court of Pennsylvania in Commonwealth *v.* Hanley, 9 Pa. 513, said: "Being duly qualified in the constitutional sense, and in the ordinary acceptation of the words, unquestionably means that he, the successor, shall possess every qualification: that he shall in all respects comply with every requisite before entering on the duties of the office; that, in addition to being elected by the qualified electors, he shall be commissioned by the Governor, give bond as required by law, and that he shall be bound by oath or affirmation to support the Constitution of the Commonwealth and to perform the duties of the office with fidelity. Until all these prerequisites are complied with by his successor * * * the respondent is de jure as well as de facto the clerk of the orphan's court."

The purpose of the provision is to supply an incumbent in office, but not to perpetuate the tenure of the officer.

The provision of the Indiana Constitution that "the General Assembly shall not create any office the tenure of which shall be more than four years" does not prevent one who holds an office created by the General Assembly, the term of which is four years, from holding over, after the expiration of his term, until his successor be elected and qualified. State *v.* Harrison, 113 Ind. 234, 3 Am. St. Rep. 663. The court in the course of its opinion said: "While we concede that the constitutional inhibi-

tion imposes an absolute restraint against the creation of a term of office by the legislature of longer duration than four years, and that it prohibits a legislative tenure, or right to hold by legislative authority, for a longer period than four years by virtue of one election or appointment, it by no means follows that the constitutional provision under which offices of legislative creation may be held after the expiration of the term fixed, and until a successor is elected and qualified, is rendered inoperative. The right to hold over is derived from the same Constitution that imposes the limitation upon the General Assembly. The constitutional provision which adds to the fixed term a contingent right to hold over until a successor shall have been elected and qualified applies in express terms to officers 'provided in this Constitution or in any law which may be hereafter passed.' "

The term of office of an officer holding over does not expire until the qualification of his successor. See State *v.* Thompson, 38 Mo. 192.

AT COMMON LAW.

It seems an officer has the right to hold over in the absence of statutory provision.

Whether or not, as a general principle of the common law, officers are entitled to hold over beyond their prescribed terms without some express provision is not settled upon authority, although the view adopted by the American courts seems to be that, in the absence of any restrictive provision, the officer is entitled to hold until he is superseded by the election of another person in his place. State *v.* Harrison, 13 Ind. 234, 3 Am. St. Rep. 663, 667.

"In an effort to arrive at a clear comprehension of this question, the inutility of seeking for information from the reported decisions of the English courts must be obvious. In England offices are usually designated as incorporeal hereditaments, granted by the crown, and the subjects of vested or private interests; and, anterior to the enactment of the statute of 5 & 6 Edw. VI, c. 16, could, with some few exceptions, be sold and transferred like any other property. 2 Bl. Comm. 37. In this county a public office can not be the property of the incumbent, because it belongs to the sovereign people who created he gov-

ernment. In the declaration of organic principles, prefixed to the instrument creating the government of this state, those holding the most important offices are declared to be 'the trustees of the public.' The same designation necessarily applies to all public functionaries. Therefore every office created either by the Constitution, or by the laws authorized by that instrument, is a public trust, created for the public benefit. Where an office is of statutory creation, the legislative department of the government may deem it unnecessary, and may abolish it; but courts must presume that every office in existence is necessary; that the public welfare is promoted by the performance of the duties attached to it; and that those duties should be discharged, without intermission, while the office continues to exist. The office being a trust created for the public good, it follows that a cessation of the benefits derived from it ought not to be sanctioned because of a failure to make an appointment by those whose duty it is to appoint. No such failure should be permitted to cause a temporary extinction of the trust. To guard against this evil, there is usually a provision for holding over until the appointment and qualification of a successor; but it has been held in some of the states that, in the absence of any such provision, the incumbent should hold over until another person has been appointed and qualified, and it is intimated that he may reasonably presume that it is his duty to do so; for it must be borne in mind that an official is frequently the custodian of important books, papers, and other property, the care of which ought not to be abandoned, and which he can not properly surrender to any one not legally authorized to assume control. People *v.* Tilton, 37 Cal. 614; Kreidler *v.* State, 24 Ohio St. 22." Robb *v.* Carter, 65 Md. 321, 4 Atl. 282, 283.

In Sappington *v.* Scott, 14 Md. 40, it was declared that there could be no interregnum in the office of register of wills, although ther was no provision expressly authorizing that officer to hold over until a successor has qualified.

De Jure or De Facto Officer.

Is such officer holding over a de jure or a de facto officer? The officer comes within the definition of a de jure officer, as one

having title to the office under the law. An officer holding over after the expiration of his term under the express authority of law can not be termed a de facto officer. But there is a considerable conflict in the decisions as to whether an officer holding over is a de jure or a de facto officer. Some of the cases defining a de facto officer mention holding over after the expiration of his term as one of the conditions which make him a de facto officer. In Griffin *v.* Cunningham, 20 Gratt. 31, 43, a de facto officer is defined as "one who comes in by the power of an election or appointment, but, in consequence of some informality or omission, or want of qualification, or by reason of the expiration of his term of service, can not maintain his position when called on by the government to show by what title he claims to hold his office. He is one who exercises the duties of an office under claim and color of title, being distinguished on the one hand from a mere usurper, and on the other from an officer de jure." By holding over in this case is meant, however, holding over without authority of law; and the judges of the court of appeals who were in office under military appointment when the state was restored to the union, holding over and continuing to exercise their office, were held to be de facto officers. Such judges did not hold under authority of a constitutional provision as above set out. In McGregor *v.* Balch, 14 Vt. 428, 436, 39 Am. Dec. 231, an officer de facto is defined as one who comes in by the form of an election, but, in consequence of some informality or want of qualification, is incapable of holding office.

A person who was the incumbent of an office during a previous term is not a de facto officer as to such office by holding over after the expiration of such time. State *v.* Oates, 86 Wis. 634, 57 N. W. 296, 297, 39 Am. St. Rep. 912. See State *v.* Farrier, 47 N. J. Law (18 Vroom) 383, 1 Atl. 751, 753; Buck *v.* City of Eureka, 109 Cal. 504, 42 Pa. 243, 245, 30 L. R. A. 409; State *v.* Bulkeley (Conn.), 14 L. R. A. 657.

An officer holding over has title to the office from the same source and by the same authority—the law—as before the expiration of the term; he is, therefore, as much a de jure officer after, as before the expiration of his term.

TERM AND TENURE.

There is a distinction between the term of the office and tenure of the incumbent of the office. The term of an office, as fixed in the Constitution or statute creating the office, is not to be confused with the tenure of the officer. State *v.* Young (La.), 68 So. 241.

The term of the office is a fixed period, which can in no manner be shortened or lengthened by the officer. The death of the officer does not shorten it, nor does his holding over lengthen it. The term is the same regardless of the tenure of the incumbent. The term of office ends with the expiration of a fixed time, although the tenure may continue until the qualification of the officer's successor. "The latter is within the control of the parties, and may be longer or shorter, according to circumstances; but the former is not. The term remains invariable, always the same, and is not subject, in its duration, to the wishes or agreements of any persons whomsoever; while the tenure of an incumbent may always be terminated by his resignation and its acceptance. During one term there may be several tenures, but there can not be several terms in one tenure." State *v.* Young (La.), 68 So. 241, 244, citing State *v.* Parker, 30 La. Ann. 1182.

In Sinclair *v.* Young, 100 Va. 284, 291, 40 S. E. 907, it is said: "A clause in a statute making officers hold over until their successors qualify did not extend the term, but merely enables the incumbent to so hold over."

In Chadduck *v.* Burke, 103 Va. 694, 698, it is said, "The period between the expiration of his term and the qualification of his successor is as much a part of the incumbent's term of office as the fixed statutory period, when the law provides that he shall hold until his successor qualifies." By term of office here is meant the incumbent's term or tenure and not the fixed term of office.

"The result is, there is a tenure for a fixed term, and if, at the end of that period, owing to the failure of the body charged with the duty of supplying the office by election, or for any other cause, no successor has been elected and qualified, the incumbent holds over by the paramount right of tenure which the constitu-

tion supplies until he is superseded by a duly qualified successor who shall have been elected in the manner provided by law. After the expiration of the fixed term the tenure or title of the officer is * * * by the continuing and superior authority and approbation of the Constitution." State *v.* Harrison, 113 Ind. 234, 3 Am. St. Rep. 663, 673.

The word "term" refers to a fixed and definite time and does not apply to an appointive office held at the pleasure of the appointing power. State *v.* Oklahoma City (Okla.), 34 Pac. 58.

RIGHT OF OFFICER TO RESIGN.

The constitutional provision reads "shall continue to discharge the duties of their office." Is this provision mandatory or directory? Must the officer continue to discharge the duties or may he resign?

Provisions of the Constitution and statutes in regard to the duties of the officers generally read "shall," but the right to resign is recognized. Construed in the light of the construction given such other similar provisions, this provision must necessarily be construed as recognizing the right of an officer to resign and to that extent as being directory.

The right of the previous incumbent to hold over until his successor is elected and qualified has no application where he surrendered the incumbency of the office upon the apparent election and qualification of his successor, and he can not thereafter resume his function upon the ground that the election of his successor was declared void and annulled on the ground of his ineligibility, after he had entered upon the duties of the office. Where the election of a person to the office of chief of police for a city was contested on the ground that he was not at the time of the election eligible to the office, and, as a result of the contest, his election was declared void and annulled on that ground, while he was an incumbent of the office, his predecessor having surrendered the incumbency to him upon his apparent election and qualification, the decision of a competent tribunal finally declaring his election void, created a vacancy which could be filled by the executive until the ensuing municipal election. People *v.* Rodgers, 118 Cal. 393.

POWER OF GOVERNOR TO APPOINT SUCCESSOR.

The Constitution provides "The Governor shall have power, during the recess of the General Assembly, to appoint, pro tempore, successors to all officers * * * and to fill, pro tempore, vacancies in all offices of the state for the filling of which the Constitution and laws make no other provision; but his appointments to such vacancies shall be by commissions, to expire at the end of thirty days after the commencement of the next session of the General Assembly." Va. Const., Art. II, § 73.

When an officer holds over under § 33, is there a vacancy in office which the Governor can fill?

The word "vacancy," as applied to an office, has no technical meaning. An office is not vacant so long as it is supplied in the manner provided by the Constitution or law with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it; and, conversely, it is vacant in the eye of the law whenever it is unoccupied by a legally qualified incumbent; who has a lawful right to continue therein until the happening of some future event. State *v.* Harrison, 113 Ind. 234, 3 Am. St. Rep. 663, 666.

No vacancy occurs, since one of the contingencies upon which the incumbent's term of office is to expire has not taken place, namely, the qualification of a successor. Kimberlain *v.* State (Ind.), 14 L. R. A. 858, 859.

In Chadduck *v.* Burke, 103 Va. 694, 49 S. E. 976, it was held that, wherever the law provides for an incumbent holding over until his successor has been appointed and qualified, there is no vacancy in the office at the expiration of the fixed term. The court said: "A vacant office is one without an incumbent. Vacancy in office is one thing and term is another. An office may be vacant and filled many times during a term of four years; but it can not become vacant at the end of a term where the incumbent is authorized to hold over, for the instant the successor is duly appointed and has qualified he becomes entitled to the office, and there has been no hiatus at all. So long, therefore, as an office is supplied with an incumbent, in the manner provided by the Constitution or law, who is legally qualified to exercise the powers and perform the duties which appertain to it, the office is

not vacant." * * * "The case of Johnson *v.* Mann, 77 Va. 265, is cited for the proposition that a vacancy exists which can be supplied by the appointing power for filling vacancies, when the incumbent of an office is holding over, by authority of law, until his successor qualifies. In that case Judge Richardson does employ language justifying this contention; but its use does not appear to have been necessary to the decision of the question there involved, and the dictim is not sound, is contrary to the current of authority, and can not be followed as a precedent." The principle announced in this case is the rule of the great weight of authority.

But in West Virginia it is held the incumbency of an office by holding over under such constitutional provision does not preclude the existence of a vacancy as a basis for the exercise of the appointive power. Kline *v.* McKelvey, 57 W. Va. 29, 49 S. E. 896.

And in the recent case of State *v.* Young, 68 So. 241, the Supreme Court of Louisiana held: The right of an officer whose term has expired during a recess of the Senate to continue to discharge the duties of the office until his successor is inducted into office, can not interfere with the authority of the Governor to appoint his successor, nor with the right of the successor to be inducted into office as soon as he has taken the oath and qualified in the manner required by law. The word "vacancy," in its literal and precise sense, means a place that is empty or unoccupied, but, as applied to the expiration of a term of office, it is ordinarily given a more liberal, figurative meaning, conforming to the intention of the lawmaker and the purpose to be accomplished. According to the latter meaning, the expiration of the term of office creates a vacancy, though the incumbent is willing to continue performing the duties of the office. The court said: "The able jurists who have expressed the opinion that the expiration of a term of office does not create a vacancy as long as the incumbent has the right and is willing to perform the duties of the office give the word 'vacancy' a literal and precise definition—a place that is empty or unoccupied. Those who have held that the expiration of a term of office does create a 'vacancy' have given the word a more liberal, figurative meaning, with reference to the intention with which it is used in the Constitution.

They have proceeded upon the theory—we might say axiom—that the intention of the lawmaker, the object aimed at, and the purpose to be accomplished, being the fundamental inquiry in judicial interpretation must control the literal meaning of a particular word in a statute."

Under the Constitution of 1873, the General Assembly of the State of Virginia is authorized to declare the cases in which any office shall be deemed vacant and the mode of filling vacancies in office in cases not therein specially provided for Const. of 1873, art. 5, § 22. In pursuance of this authority the General Assembly declared that the failure of any county, corporation, or district officer to qualify before the commencement of his term of office, shall create a vacancy in his office. Code 873, ch. 6, § 22; Vaughan *v.* Johnson, 77 Va. 300. This does not mean that there is a vacancy created in the office of the officer holding over, but that there is a vacancy in the office of the person failing to qualify. In order to clearly understand this, it is necessary to bear in mind the distinction between the term of the office and the tenure of the officer. The tenure of the holding over officer continues despite the failure of his successor to qualify, but the tenure of the successor does not begin unless and until he qualifies.

The power to fill a vacancy does not carry with it the power to create one. Without express authority to that end the Governor can not remove an officer and so create a vacancy in order to fill it. The appointing power conferred upon the Governor by the charter of a college, as to the visitors thereof, the terms of which are to fill vacancies that may occur by death, resignation or otherwise. does not empower the Governor to remove incumbents in order to fill such places. Lewis *v.* Whittle, 77 Va. 415, 421.

An office is terminated, proprio vigore, by death, resignation, or removal by competent authority. But in other cases the office is not determined ipso facto by the occurrence of the cause. There must be a judgment of amotion after judicial ascertainment of the fact, which may be by indictment or information, by writ of quo warranto, or by impeachment. Bland, etc., County Judge Case, 33 Gratt. 443; Johnson *v.* Mann, 77 Va. 265, 270.

For the regular and ordinary election and appointment of officers, the Constitution and statutes enacted pursuant to it, provide that in some instances the Governor shall have power to nominate, but in no instance provide that he shall have exclusive power. It is not intended that the executive shall embrace the elective or appointive power. It is only in the unusual and emergent cases occurring during the recess of the General Assembly that the Governor is empowered to appoint an officer—then he can appoint only when the Constitution and laws make no other provision. The Constitution reads for the filling of "vacancies in all offices of the state, for the filling of which the Constitution and laws make no other provision." The Constitution provides that "all officers, elected or appointed, shall continue to discharge the duties of their office after their terms of service have expired, until their successor has qualified." It is therefore clear that during the term of a holdover officer, there is no vacancy which the Governor has power to fill. Else why is the power limited to vacancies for the filling of which the Constitution and laws make no other provision, and when such other provision is made?

POWER OF LEGISLATURE TO INCREASE OR DIMINISH SALARY.

The General Assembly shall not enact any local, special, or private law, creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed. Va. Const., Art. II, § 63.

Under this provision can the General Assembly increase or decrease the salary of an officer holding over after the expiration of his term of office?

It is here that the distinction, as pointed out above, between term of office and tenure of the officer becomes of importance, if not determinative of the question. By the use of the words "during the term for which they are elected or appointed," it would seem the Constitution means during the term of the office and not during the tenure of the officer, which includes the time the officer holds over; but, as the various constitutional provisions relating to officers holding over are in pari materia and must be construed together, and in order to harmonize these

various provisions, the words "term of office" must be given different meanings in the different provisions. These different provisions necessitate a construction which amounts almost to rewriting. The provision that all officers "shall continue to discharge the duties of their office after their terms of service have expired," is to be construed to read "after the term of the offices to which they are elected have expired," otherwise there could be no expiration of a term of office. The question now arises, shall this provision be construed according to the words used, or according to an assumed intention of the law-making body? The provision reads "during the term for which they are elected or appointed." Shall it be construed according to its letter or shall it be construed according to the assumed intention that the law-making body meant during the term for which the officer was elected and also during the term he holds over?

The authority of cases from other states can have but little weight in the construction of this provision. It has been held by the United States Court of Claims that one claiming a salary must prove his legal title to the office, and an officer de facto and not de jure can not maintain an action for salary. Thus a person appointed an Indian agent by the President during a recess of the Senate, and afterwards nominated for that office by the President to the Senate, which adjourned without acting on the nomination, can not recover the salary of the office from such adjournment till his successor was appointed. Romero *v.* United States (U. S. Ct. of Claims) 5 L. R. A. 69.

In the Constitution of Oklahoma, art. 23, § 10, providing that in no case shall the salary of any public official be changed after his election or appointment during his term of office, the word "term" refers to a fixed and definite time and does not apply to an appointive office held at the pleasure of the appointing power. Such officer has no term of office. State *v.* Oklahoma City (Okl.), 134 Pac. 58. This case is authority for the proposition that the term must be fixed and definite.

But it is held in State *v.* Smith, 87 Mo. 158, the salary of the assessor and collector of water rates of the city of St. Louis, whose term of office is for "four years and until his successor shall have been duly appointed and qualified," can not be increased during the term for which he was appointed. And the

time he holds over after the designated period of four years is as much a part of the term of his office as that which precedes the date at which the new appointment should be made, and no increase of salary made during his term can be allowed him for such time so held over. See Const. of Mo. 1875, Art. 14, § 8.

This provision is clear and the words, "during the term for which they are elected or appointed," not being open to construction, must be given their literal meaning, which is the term of the office to which the officer is elected. It would be putting the assumed intention of the law-making body above their clearly expressed intention, to construe this provision to mean during the term of the office to which the officer was elected and also during the term he holds over until the qualification of his successor.

When an officer enters into an office, he enters into it for a fixed time, for which he is to receive a salary which is to be neither increased nor decreased during that time. The holdover period is in the mind of neither the officer nor the public and does not in any way enter into his assumption of the duties of the office, for which he has the right to expect a fixed salary. After the end of such term it is neither a favor nor a hardship for his salary to be either increased or decreased, nor could he complain if the office were entirely abolished.

LIABILITY OF SURETIES ON BOND.

Where an officer holds over, are the sureties on his official bond liable for his acts during his holding over?

The leading case in the line of authorities, and one which may be said to have expressed with directness, for the first time, the doctrine in question, is that of Lord Arlington *v.* Merricke, 3 Saund. 403. The aspect of that case was this: Lord Arlington, who was postmaster-general, had appointed a certain person to be "deputy postmaster of the stage of Oxon," etc., to execute the said office from, etc., * * * for the term of six months. The condition of the bond was that if the said deputy should, "for and during all the time" that he should continue deputy postmaster, then, etc., the obligation should be void. The case therefore presented the problem as to the legal effect of a bond made by an officer whose term of office was definite, having a condition

that, in terms, stipulated for his good behavior generally while continuing in the same office. The attempt in the reported case was to hold the sureties responsible for misfeasance by the deputy postmaster, committed after the expiration of his six months' term of office, he having been continued in his position beyond that period. But Lord Hale would not agree to this contention, adopting the view expressed by Saunders in his argument to the effect that it was the fair understanding, from the whole of the instrument, that the surety intended to be bound for the due execution of the said office, "only for six months," and that if the argument for the plaintiff prevailed, he would be bound during the whole life of his principal, which was "unreasonable to suppose." The precise point here obviously decided was, that although the obligatory words in the condition of an official bond were so broad that, intrinsically considered, they covenanted for the good behavior of the principal obligor during the whole period of his remaining in the designated office, nevertheless their efficacy would be restricted to his current term, when such term was for a determinate period, the ground of judgment being the manifest intent to that purpose of the contracting parties.

"In the case of Com. *v.* Fairfax, 4 Hen. & M. 208, it was decided that, though a person might be continued in the office of sheriff for two successive years, an annual nomination, appointment and bond were necessary; and that the words, 'during his continuance in office,' inserted in the bond executed the first year, had reference to the actual duration of the office by virtue of the appointment under which the bond was taken. In the case of Munford *v.* Rice, 6 Munf. 81, the same words in the bond of the deputy executed the first year, received the same construction, and were limited to that year. The case was considered as falling within the principles of that of Com. *v.* Fairfax, and as not coming within the decision in Royster *v.* Leake, 2 Munf. 280, in which the condition of the bond stated that the deputy was to act as such until Goochland November court, 1804. And that stipulation was considered as added to, and extending the expression 'during his continuance in office,' beyond the year for which his principal was first appointed; and which, in this private contract between the sheriff and his deputy, it was com-

petent for them to do." Cecil *v.* Early, 10 Gratt. 198, 205. See Tyler *v.* Nelson, 14 Gratt. 214, 221.

The surety upon an official bond can only be held by the express terms of his contract. Fidelity, etc., Co. *v.* Beale, 102 Va. 295, 303, 46 S. E. 381.

"If the bond is for a definite time, with no provision as to liability until a successor is appointed, the liability on the bond will cease with the expiration of that time. So, if the office is for a definite time, with no provision as to holding until a successor is appointed, and the bond is for the term of the office, the liability will cease with the expiration of the office." Note in 35 L. R. A. 88.

Under the constitutional provision that an officer shall hold over until his successor is elected and qualified, the liability of the sureties on his bond continues after the expiration of the term.

In Baker City *v.* Murphy (Or.), 35 L. R. A. 88, 93, it is said: "It is a well-settled rule of law, recognized generally, if not by all the authorities, that bonds or obligations given to secure the performance of official duties are to be construed with reference to the term for which the incumbent is elected or appointed; and it is equally well settled that the law governing as to the term, its time of commencement and expiration, and the conditions and contingencies upon which it shall begin, continue, and come to an end, enters into and forms a part of such bonds or obligations, where general language is used in stipulating the conditions. Sureties upon such undertakings are presumed to have known the duration of the terms when they became parties to them, and to have intended to bind themselves to the extent, and for and during the time, that their principals are bound. It is only upon the application of the rule to statutory enactments governing the tenure of office that the authorities appear to part company." See Welch *v.* Seymour, 28 Conn. 393; Kitson *v.* Julian, 24 L. J. Q. B. N. S. 204; Wapello County *v.* Bingham, 10 Iowa, 42, 74 Am. Dec. 370; State Treasurer *v.* Mann, 34 Vt. 371, 80 Am. Dec. 688; Proprietors of Liverpool Waterworks *v.* Atkinson, 6 East 501; St. Saviour *v.* Bostock, 2 Bos. & P. N. R. 179; Lord Arlington *v.* Merricke, 2 Wms. Saund. 412; Hassell *v.* Long, 2

Maule & S. 368; Savings Bank *v.* Hunt, 72 Mo. 597, 37 Am. Rep. 449; Thompson *v.* State, 37 Miss. 522; State *v.* Jackson Twp. *v.* Berg, 50 Ind. 496; Sparks *v.* Farmers' Bank, 3 Del. Ch. 300; Riddel *v.* School Dist. No. 72, 15 Kan. 168; Rahway *v.* Crowell, 40 N. J. L. 207; State, Irwin, *v.* Crooks, 7 Ohio, pt. 2, p. 221; Scott County *v.* Ring, 29 Minn. 401.

There is a conflict of authority as to whether the liability of the sureties continues a reasonable time for appointment or until actual appointment. In Rahway *v.* Crowell (N. J.) 29 Am. Rep. 224, it is held that where an officer, who holds for a definite term and until the appointment of his successor, gives a bond for good behavior during his term, the bond did not extend until the actual appointment of his successor, but only to a reasonable time for such appointment.

But it is generally held that the sureties continue liable until the actual election and qualification of the officer's successor. Long *v.* Seay, 72 Mo. 648; State *v.* Kurtzeborn, 78 Mo. 99; State *v.* Daniels, 51 N. C. 444.

Officers hold over until their successors have qualified, and the sureties upon their official bond continue liable for their default until the actual termination of their terms, regardless of such extension. Com. *v.* Drewry, 15 Gratt. 1.

When by virtue of a statute one is collector de jure of a city until his successor is elected and qualified, his sureties are bound to the same extent for his default while thus in office after the end of two years from the day of the election of his predecessor that they are for his default during the two years. Wheeling *v.* Black, 25 W. Va. 266.

Where a reëlected officer professed to enter upon his office and act under his last election, it can not be held that he continued to hold over and act under his first election, on the ground that his successor had not qualified, so as to subject his sureties in the previous bonds. Monteith *v.* Com., 15 Gratt. 172.

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